



DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 705

[Docket No. 230810-0188]

RIN 0694-AJ27

Revisions of the Section 232 Steel and Aluminum Tariff Exclusions Process

AGENCY: Bureau of Industry and Security, U.S. Department of Commerce.

ACTION: Proposed rule.

SUMMARY: This proposed rule revises aspects of the process for requesting exclusions from the duties and quantitative limitations on imports of aluminum and steel discussed in five previous Bureau of Industry and Security (“BIS”) interim final rules implementing the exclusion process authorized by the President under section 232 of the Trade Expansion Act of 1962, as amended (“Section 232”). The changes in this proposed rule are also informed by a notice of request for public comments on the Section 232 exclusions process that was published by BIS on February 10, 2022 (February Notice). The February Notice was directed by Proclamation 10328 of December 27, 2021, that directed BIS to review the Section 232 exclusions process to make improvements, including soliciting public comments as part of the review process. Based on a BIS review of the existing Section 232 exclusion process for areas of improvement and public comments on the current process for submissions to BIS, BIS is publishing this proposed rule to propose revisions to the Section 232 exclusions process, including to the Section 232 Exclusions Portal. As part of this proposed rule, BIS requests public comments on the proposed changes.

DATES: Comments on this proposed rule must be received by BIS no later than [INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: See **SUPPLEMENTARY INFORMATION** section for information on submitting exclusion requests, objections thereto, rebuttals, and surrebuttals.

You may submit comments, identified by docket number BIS-2023-0021 or RIN 0694-AJ27, through the *Federal eRulemaking website*: <http://www.regulations.gov>. No other submission methods are being used for submitting comments on this proposed rule. Follow the instructions for submitting comments.

All filers using the portal should use the name of the person or entity submitting comments as the name of their files, in accordance with the instructions below. Anyone submitting business confidential information should clearly identify the business confidential portion at the time of submission, file a statement justifying nondisclosure and referring to the specific legal authority claimed, and provide a non-confidential version of the submission.

For comments submitted electronically containing business confidential information, the file name of the business confidential version should begin with the characters “BC.” Any page containing business confidential information must be clearly marked “BUSINESS CONFIDENTIAL” on the top of that page. The corresponding non-confidential version of those comments must be clearly marked “PUBLIC.” The file name of the non-confidential version should begin with the character “P.” The “BC” and “P” should be followed by the name of the person or entity submitting the comments or rebuttal comments. Any submissions with file names that do not begin with a “BC” or “P” will be assumed to be public and will be made publicly available through <http://www.regulations.gov>. Commenters submitting business confidential information are encouraged to scan a hard copy of the non-confidential version to create an image of the file, rather than submitting a digital copy with redactions applied, to avoid inadvertent redaction errors which could enable the public to read business confidential information.

FOR FURTHER INFORMATION CONTACT: For questions regarding this proposed rule, contact Erika Maynard at 202–482–5572 or via email Erika.Maynard@bis.doc.gov, or email Steel232@bis.doc.gov regarding provisions in this proposed rule specific to steel exclusion requests and Aluminum232@bis.doc.gov regarding provisions in this proposed rule specific to aluminum exclusion requests.

SUPPLEMENTARY INFORMATION:

Background

On March 8, 2018, Presidential Proclamations 9704, *Adjusting Imports of Aluminum Into the United States* (83 FR 13267), and 9705, *Adjusting Imports of Steel Into the United States* (83 FR 11625), imposed duties on imports of aluminum and steel. The Proclamations also authorized the Secretary of Commerce to grant exclusions from the duties if the Secretary determines the steel or aluminum article for which the exclusion is requested is not “produced in the United States in a sufficient and reasonably available amount or of a satisfactory quality” or should be excluded “based upon specific national security considerations,” and provided authority for the Secretary to issue procedures for exclusion requests. On April 30, 2018, Proclamations 9739 and 9740, and on May 31, 2018, Proclamations 9758 and 9759, set quantitative limitations on the import of steel and aluminum from certain countries in lieu of the duties. On August 29, 2018, Proclamations 9776 and 9777 also authorized the Secretary to grant exclusions from quantitative limitations based on the same standards applicable to exclusions from the tariffs.

The Section 232 exclusions process

Since March 19, 2018, BIS has published five interim final rules (IFRs) that established and made various revisions to the Section 232 exclusions process, as well as a Notice of Inquiry seeking public comment on certain aspects of the Section 232 exclusions process.

On March 19, 2018, BIS issued an IFR, *Requirements for Submissions Requesting Exclusions from the Remedies Instituted in Presidential Proclamations Adjusting Imports of Steel into the United States and Adjusting Imports of Aluminum into the United States; and the*

Filing of Objections to Submitted Exclusion Requests for Steel and Aluminum (83 FR 12106), establishing the Section 232 exclusions process in supplements no. 1 and 2 to 15 CFR part 705.

On September 11, 2018, BIS issued a second IFR, *Submissions of Exclusion Requests and Objections to Submitted Requests for Steel and Aluminum* (83 FR 46026), which revised the exclusions process to increase transparency, fairness, and efficiency.

On June 10, 2019, BIS issued a third IFR, *Implementation of New Commerce Section 232 Exclusions Portal* (84 FR 26751), that revised the two supplements to part 705 to grant the public the ability to submit new exclusion requests through the Section 232 Exclusions Portal while still allowing the opportunity for public comment on the portal.

On May 26, 2020, BIS issued a notice of inquiry with request for comment, *Notice of Inquiry Regarding the Exclusions Process for Section 232 Steel and Aluminum Import Tariffs and Quotas* (85 FR 31441), that sought public comment on the appropriateness of the information requested and considered in applying the exclusion criteria and the efficiency and transparency of the process employed.

On December 14, 2020, BIS issued a fourth IFR, *Section 232 Steel and Aluminum Tariff Exclusions Process* (85 FR 81060), which established General Approved Exclusions (GAEs) to reduce the number of exclusion requests for products consistently found not to be produced in the United States, reducing the submission burden on both industry and the Section 232 exclusions process. The December 14 IFR identified 123 GAEs that had generally never received an objection or very few objections via the Section 232 exclusions process. GAEs are available to all would-be requesters for steel and aluminum products imported under 10-Digit Harmonized Tariff Schedule of the United States (HTSUS) classifications without quantity limit or expiration date.

On December 9, 2021, BIS subsequently suspended 30 GAEs in its fifth IFR, *Removal of Certain General Approved Exclusions Under the Section 232 Steel and Aluminum Tariff*

Exclusion Process (86 FR 70003), on the Section 232 Exclusions process because they were determined by BIS to no longer fit the criteria of a GAE.

On January 3, 2022, Presidential Proclamations 10327 (87 FR 1) and 10328 (87 FR 11) were published. These Proclamations implemented an understanding reached between the United States and the European Union including the establishment of tariff rate quotas for steel and aluminum articles imported from the European Union member countries. Proclamation 10328 also directed the Secretary of Commerce to seek public comment on the Section 232 exclusions process, including the responsiveness of the exclusions process to market demand and enhanced consultation with U.S. firms and labor organizations.

On February 10, 2022, BIS published *Request for Public Comments on the Section 232 Exclusions Process* (87 FR 7777) (February 2022 Notice), as directed by Presidential Proclamation 10328. The notice sought public comment on a variety of topics regarding the responsiveness of the exclusions process to market demand and enhanced consultation with U.S. firms and labor organizations. The notice comment period closed in March 2022, having received nearly 100 comments. Information about the comments received, along with BIS's responses, are detailed below.

Why is BIS publishing this proposed rule?

BIS is publishing this proposed rule to seek public comment on changes the Department believes will further improve the Section 232 exclusions process, following the receipt of comments from the February 2022 notice and then making any refinements in the changes proposed in this proposed rule in response to the comments received. BIS believes these changes will make important improvements and is requesting public comments to further evaluate how effective these changes will be in improving the Section 232 exclusions process. This action is consistent with the Department's approach of continually working to improve the process and obtain public feedback.

This proposed rule serves two functions. First, it seeks comments, as required by Proclamation 10328. Second, it responds to the outstanding comments received in the broader Section 232 exclusions process IFRs detailed above. As a matter of rulemaking, an IFR is generally followed by a final rule. Therefore, this proposed rule finalizes the Section 232 exclusions process IFRs. Any further action to modify the Section 232 exclusions process will be taken through issuance of a final rule.

What are the key changes included in this proposed rule?

This proposed rule makes the following four changes to the Section 232 exclusions process:

First, it creates a more efficient GAE process. BIS is committed to maintaining GAEs as a policy matter and is using this proposed rule to further clarify the general process by which GAEs are identified. As noted above, BIS issued an initial list of GAEs in December 2020 and modified the list of GAEs in December 2021. Originally, GAEs had been noted by commenters who submit exclusion requests, and by trade associations that represent those companies, as one of the most important changes that could be made to improve the efficiency of the Section 232 exclusions process. Their creation was estimated to result in an immediate decrease of 5,000 exclusion requests annually, resulting in a significant improvement in efficiency, with the possibility of more in the future. GAEs were identified at the ten-digit statistical reporting number of the HTSUS that had generally received no objections.

BIS proposes changing the criteria that has generally been used for GAEs from the HTSUS statistical reporting number that have received no objections to HTSUS classification codes (or subproducts) with very low rates of successful objections. The current criteria have focused most heavily on whether an HTSUS code has received objections. One of the problems with this past approach is that any party opposed to certain GAEs could submit objections regardless of the merits of those objections, which would make those HTSUS categories

ineligible for GAE status. This undermines the effectiveness of the Section 232 exclusions process, creates unnecessary burdens on BIS and industry, and reduces the fairness and efficiency of the process. BIS still believes that the number of objections received is generally the right criterion to use; however, that criterion needs to be updated to focus on the number of substantiated objections, which is a better metric to use and should deter objections only submitted to prevent specific GAEs. BIS believes that the low rates of successful objections for specific 10-digit HTSUS classification codes shows that U.S. industry does not produce the products or subproducts in question in a sufficient and reasonably available amount or of a satisfactory quality. New GAEs will continue to be identified following a thorough analysis of objections. As described below, BIS proposes these actions to ensure the process for identifying future GAEs is efficient and fair. BIS estimates that this change could result in up to a twenty percent reduction in the total number of exclusion requests submitted in the 232 Exclusions Portal, depending on the ultimate objection rate threshold and application used by the Department.

Second, and relatedly, this proposed rule addresses the need to create a more efficient Section 232 exclusions process by introducing a General Denied Exclusions (GDE) process. GDEs have been requested by commenters, who submit objection requests, as an important change that could be made to improve the efficiency of the Section 232 exclusions process and provide a balance to the GAE process. While it is difficult to estimate the expected annual reduction in exclusion requests, BIS anticipates an improvement in efficiency as well as increasing fairness in the process by providing a process comparable to the GAE process. Like BIS's proposed GAE evaluation, GDEs will generally be implemented if, among other things, the HTSUS classification code (or subproducts) have very high rates of successful, substantiated objections. BIS has added various requirements, such as certifications, over the years to limit voluminous exclusion requests that may exceed potential objectors' ability to fairly assess the requests and their ability to satisfy the requests, which has helped improve the efficiency of the

Section 232 exclusions process. The addition of the GDEs will further enhance the efficiency of the Section 232 exclusions process by reducing the burden on objectors and requesters with respect to Section 232 exclusion requests that historically have had a very low likelihood of being approved. As with GAEs, GDEs would be applied in a manner that would increase efficiency and have little impact on which products are ultimately subject to or excepted from the tariffs. New GDEs would be identified following an analysis of substantiated objections and exclusion requests that have generally been consistently denied. As described below, BIS introduces GDEs in this proposed rule.

Third, BIS is using this proposed rule as an opportunity to modify the existing certification language and introduce new certification requirements for exclusion requests. Volume certifications were introduced onto the Exclusion Request Form in December 2020 in the Section 232 Exclusions Portal. Volume certification requirements were established after data reviewed by BIS indicated that some exclusion requesters were submitting exclusion requests for high volumes of product not ultimately imported. Continual processing of high volumes of exclusions not utilized decreases the efficiency of the Section 232 exclusions process and reduces the accuracy of data used by BIS to generate informed policy decisions on the Section 232 national security measures. The certification process further ensures that the requested volume in exclusion requests is consistent with the past and future use of steel or aluminum by an exclusion requester. Currently, requesters certify that their business “expects to consume, sell, or otherwise use the total volume of product...within the next calendar year” across their requests, which is subject to a verification by BIS.

BIS proposes modifications to the existing certification on the Exclusion Request Form. With the proposed changes, before filing an exclusion request, requesters would also need to certify that they have first made reasonable efforts to source their product from the United States and then, if unsuccessful in sourcing from the United States, that they have made reasonable efforts to source their product from a country with which the United States has arrived at a

satisfactory alternative means to address the threat to the national security under Section 232. In addition to the certification, requesters would be required to file, simultaneously with their request submission, evidence of the certified sourcing attempts. These can be filed publicly as an attachment to the request submission, or if the information is claimed to be confidential then requesters can submit information to an email address similar to the process by which requesters currently submit confidential information linked to their rebuttals. These sourcing attempts need to have been made within 12 months from the date of submission of the request. BIS is seeking comments (see below) regarding what the evidence supporting sourcing attempts should be and how it should be defined. The United States has alternative arrangements with several other markets, including Argentina, Australia, Brazil, Canada, the European Union, Japan, Mexico, South Korea, and the United Kingdom. Therefore, requiring certification for attempting to source from the United States or an identified partnered country ensures that an attempt was made to first procure from those partner countries. If the sourcing attempts evidence is not provided simultaneously with the request submission, then the request will be rejected. BIS is seeking comments (see below) regarding the appropriate form and substance of evidence that must be provided by requestors to support their certification of such sourcing attempts.

Fourth, BIS is proposing similar certification language on the objection form to further ensure objectors can supply comparable quality and quantity steel or aluminum and make it “immediately available” to requestors in line with the standards described in the previous Section 232 IFRs referenced above. BIS welcomes comments from the public on whether this standard is appropriate for the certification or if a different time period should be specified. BIS is also interested in comments on how to address differences between different types of products, which may require longer periods, if a commenter suggests a different time period be specified. With this proposed change, objectors would certify their intent and ability to provide the requested product to the requester if successful in their objection. In addition to the certification, objectors would be required to file, simultaneously with their objection submission, evidence that it has

commercially sold the same product as that which is being requested within the last 12 months, or evidence that it has engaged in sales discussions with this requesting company or another company requesting the same product within the last 12 months. This evidence can be filed publicly as an attachment to the objection submission, or if the information is claimed to be confidential then requesters can submit information to an email address similar to the process by which objectors currently submit confidential information linked to their surrebuttals. If the evidence described above is not provided simultaneously with the objection submission, then the objection will be rejected. BIS is seeking comments (see below) regarding the appropriate form and substance of evidence that must be provided by objectors to support their certification of such sales discussions. This proposed change will reduce cases where objections to an exclusion are made but the objector fails to follow through on supplying the material.

Each of the four proposed changes above would add additional features to the Section 232 exclusions process to better ensure that participants in the Section 232 exclusions process further focus their requests and objections as well as make important changes to improve the efficiency of the Section 232 exclusions process. The proposed requirements to provide certain evidence upon submission, as opposed to later upon request of BIS, will enable BIS to conduct more timely and accurate certification reviews and enhance fairness, transparency, and efficiency in the Section 232 exclusions process for all involved parties.

Public Comments and BIS Responses

The public comment period on the February 2022 Notice closed in March 2022. BIS received nearly 100 public comments on the notice of inquiry, with one comment being deemed unresponsive. Several commenters referenced the imposition of duties and quantitative limitations, questioning the benefit of such regulations. Those comments are outside the scope of the February 2022 Notice that solicited comments on the Section 232 exclusions process. BIS

has previously provided responses on these types of comments in the Section 232 rules cited in this proposed rule; therefore, BIS is generally not summarizing or providing responses to those general comments on the duties and quantitative limitations in this proposed rule. Some subject matter in the comments below may overlap generally with comments received in response to previous BIS Section 232 exclusions process publications that solicited public comments and that garnered BIS response or were still being considered under the last administration. However, they were overtaken by the larger review of the Section 232 exclusions process that is being undertaken by the current administration and the February 2022 Notice that provided a new opportunity for the public to identify what remaining issues needed to be improved under the Section 232 exclusions process.

The comments BIS received in response to the February 2022 Notice cover the same topics as the comments from previous Section 232 exclusion process publications. So, this proposed rule is responsive to all those comments. The comments described in this proposed rule are either different enough from comments previously responded to in past Section 232 exclusions process publications to warrant response or that they warrant additional comment due to an ever-changing industrial landscape and the continuing effort to ensure that administration of the Section 232 exclusions process remains fair, efficient, and transparent.

Based on the comments received in response to February 2022 Notice, BIS is proposing additional steps to increase the fairness, efficiency, and transparency of the Section 232 exclusions process. BIS has combined comments with similar subject matter such that the BIS response to those comments in this proposed rule is more efficient. As part of this proposed rule, BIS welcomes comments from the public, particularly those that participate in the Section 232 exclusions process, on whether the changes included in this proposed rule achieve the stated objectives; at the same time, BIS also welcomes any other comments or suggestions from the public regarding the fairness, efficiency, and transparency of the Section 232 exclusions process.

Transparency

General Concerns

Comment (a)(1): Several commentors suggested that BIS should require public summaries of confidential business information (CBI) in exclusions requests and objections. This would be similar to the existing requirements for rebuttals and surrebuttals.

BIS response: BIS agrees that this improves transparency in the request and objection stages. In fact, the system already requires that parties submit public summaries of CBI for rebuttals and surrebuttal. Expanding this requirement to requests and objections is in line with the existing requirements for rebuttals and surrebuttals. Submissions of such information should be in sufficient detail to permit a reasonable understanding of the substance of the information to allow rebuttal. A party's failure to timely and properly provide and summarize its CBI detracts from transparency and fairness and can result in BIS not considering a party's CBI. The regulations regarding CBI for the Section 232 exclusions process and the submission of CBI are found in paragraph (b)(5)(iii) of supplement no. 1 to part 705.

Comment (a)(2): Commenters provided input on requiring public disclosure of delivery times on the exclusion request and objection forms. One commentor suggested that they should be required.

BIS response: This is already explicitly required under paragraphs (c)(6) *Criteria used to review exclusion requests* and (d)(4) *Substance of objections to submitted exclusion requests* in supplement no. 1 to part 705. Paragraphs (c)(6) and (d)(4) note that it is incumbent upon both the exclusion requester and objecting producers to provide evidence supporting their claimed delivery times, from the receipt of a binding purchase order to ultimate delivery of the material to the domestic facility of the requester. BIS is further proposing language, including additional text to paragraph (d)(4), to clarify that all delivery and production times requested in the objection form are not considered CBI and must be included in the objection form for any

product that is the subject of the request and objection. Objections that do not appropriately include delivery times where requested in the public version will be rejected by BIS.

Comment (a)(3): Multiple commenters suggested that delivery time should require certification.

BIS response: BIS agrees with this suggestion. The current system already requires certification that information provided within an objection is factual and supported by documentation as needed, as referenced above in response to comment (a)(2). BIS also notes that everything reported by all party involved in the Section 232 exclusions process is certified as true under penalty of perjury.

Comment (a)(4): One commentator suggested that BIS should consider the logistical challenges and other supply chain issues facing imports in evaluating delivery times; and that BIS should seek clarification from relevant parties when necessary to ensure an accurate determination when comparing to domestic delivery timetables.

BIS response: BIS disagrees with this suggestion because market conditions are constantly changing; using relative measures for delivery time would prevent BIS from fairly applying the same standard across all parties to the Section 232 exclusions process. BIS also stresses that seeking clarification with relevant parties would by necessity occur through private communications; however, it is critical that all relevant information, including accurate delivery timeframes, be provided in the public record for all parties to have an opportunity to comment on or contest such claims. Requesters with unique delivery challenges have repeated opportunities throughout the process to provide additional information in the public record and/or could submit a new exclusion request if facts of the case change.

Comment (a)(5): One commentator suggested that BIS should verify with objectors that the products are available on a “turnkey” basis in a commercially reasonable time and noted that this process may include calling consumers or asking the objector directly about how quickly they can fulfill a request.

BIS response: BIS does not agree with this suggestion. This information is provided in the record. While this information is subject to change, BIS evaluates the provided information based on conditions at the time of submission. BIS also notes that the rebuttal process, as well as the surrebuttal process are intended to allow the parties involved, to provide updated information as the parties respond to each other in the Section 232 exclusions process.

Comment (a)(6): Similarly, one commentor stated that objectors who are already operating at full capacity should not be allowed to object.

BIS response: BIS does not agree with this suggestion because market conditions can and do change. For example, an objector may be in the process of adding capacity, so BIS does not want to impose a restriction that would prohibit such producers from being able to submit objections. The expansion of domestic industrial capacity for aluminum and steel is key to achieve the national security objectives of the tariffs and the Section 232 exclusions process, so adopting this type of a restriction would run counter to that objective.

Certification for Objectors and Requesters

Comment (b)(1): Several commentors suggested that objectors and requesters should both be required to submit “substantive evidence regarding these claims [the assertions they make in Section 232 submissions].”

BIS response: BIS agrees that claims made by objectors and requesters must be adequately supported. BIS is introducing additional certification requirements on objection forms as well as evidence requirements for objection submissions. These certifications and additional evidentiary requirements are designed to address concerns of objectors filing objections when they cannot or will not provide the requested product. Under the proposed certification of objection submitted requirement pursuant to paragraph (d)(5) in supplement no. 1 to part 705, the objector must certify that they currently manufacture the requested product at a facility in the United States. They must also certify that in response to a written request by the requester during

the next year they will offer to sell and timely deliver to the requester the full quantity of the product at then-existing market rates and terms and in accordance with the other terms specified in the objection that they are submitting. Ensuring that all parties involved in the process substantiate their claims facilitates achieving the Section 232 exclusions process objectives. As for the requesters, imports from countries with which the United States has an alternative means to address the national security threat already make up roughly 70% of steel and aluminum imports. Therefore, adding this certification statement not only better balances requirements for requesters and objectors, but will not significantly increase the regulatory burden on requesters.

Comment (b)(2): At least one commenter requested BIS institute the same additional certification requirements for rebuttals, as is done for exclusion requests.

BIS response: BIS does not agree that this is necessary. In addition to the unique certification requirements for requesters and objectors, parties must certify under the threat of criminal prosecution that all information contained in all their submissions are complete and correct to the best of their knowledge. As a result, any statement made in a rebuttal or surrebuttal needs to be consistent with the certifications already made by the organization in the exclusion request or objection – meaning that including any additional unique certification requirements in the rebuttal or surrebuttal forms is not necessary.

Exclusion Requests

Timeline for Requests

Comment (c)(1): BIS received a comment suggesting that exclusions for new requests continue to be for up to one year, but up to two years if it is an existing request that has previously been granted, due to the current global supply chain issues.

BIS response: BIS is considering this as market conditions are constantly changing. This change would not require a regulatory change. Under the existing paragraph (h)(2)(iv) to supplement no. 1 to part 705, BIS already specifies that exclusions will generally be approved

for one year from the date of the signature on the decision memo, but may be valid for shorter or longer than one year depending on the specifics of the exclusion request. So, exclusion requesters already can request longer periods for exclusion requests and BIS already has the regulatory authority to approve longer exclusion requests when warranted. However, the circumstances under which BIS would approve a longer exclusion request must be unique to require such an action. Currently, the conditions are not unique such that they require a longer exclusion request. Also, exclusion requesters should also be aware that approving multiyear exclusion requests could run counter to the objectives of trying to encourage increased capacity utilization in the United States. BIS would also take that into account when considering a longer period for an exclusion request than one year.

Comment (c)(2): BIS received a comment suggesting that one way to reduce the burden on all parties involved in the process would be to implement a limited period each year where exclusions can be requested for the following calendar year.

BIS response: BIS is not making those changes at this time, given the dynamic nature of the markets at this time. In addition, BIS questions whether compressing all reviews into a short time period would improve the overall efficiency and burdens associated with administering the Section 232 exclusions process.

Comment (c)(3): A commenter suggested that BIS should collaborate with Customs and Border Protection (CBP) to implement a system to automatically register granted exclusions with CBP to help streamline the Section 232 exclusion process and reduce unnecessary administrative work for both agencies.

BIS response: BIS already works closely with CBP to quickly report granted exclusions on a weekly basis and ensure they are programmed accurately into the Automated Commercial Environment (ACE). BIS and CBP continue to make improvements in this area within their existing program constraints and are currently considering further potential programmatic enhancements to the data transfers between BIS and CBP. CBP recently revised and streamlined

its procedures for activating granted exclusions and parties should continue to confer directly with CBP about the procedures for utilizing a granted exclusion.

Information Provided in Requests

Comment (d)(1): A commentor suggested that information collected in the exclusion process does not allow for requesters to provide information related to objections on their products in previous requests. If it did, the commenter notes, requesters would be able to address those objections before they occur again and BIS would have that information at the outset, allowing faster decisions.

BIS response: BIS disagrees with this comment. BIS already encourages requesters to submit this type of information in their exclusion requests or the related supplements. BIS also encourages requestors to submit this type of information as relevant when filing rebuttals to objections received against their exclusion requests. However, BIS maintains that all requests are reviewed solely based on the information provided in each individual record of exclusion requests, objections, rebuttals, and surrebuttals, as well as any associated public or CBI attachments.

Comment (d)(2): One commenter suggested that BIS should eliminate redundant or superfluous parts in the forms.

BIS response: BIS generally agrees with this, however, has concerns with this suggestion in practice. Obtaining the necessary physical, mechanical and chemical characteristics on the requested products ensures that an accurate description of the products is provided that is subject to a request. However, BIS acknowledges that the “full, complete description of the product” sought in the noted up-front section of the questionnaire, if properly provided, provides the necessary characteristics of the product. The additional specific characteristics provide further clarification on the products but may not further the ability of parties to review the material subject to the request or provide further insight into the government’s ability to implement

decisions on products subject to the requests. Also, some fields, such as names of ports of entry and number of shipments may be possibly reexamined. So, BIS will seek public comment on this matter. *See* the Request for Public Comments section for specific information sought.

Other General Requester Comments

Comment (e)(1): A commenter suggested that before considering any new product exclusion request, BIS should require: 1) evidence that the requested product cannot be sourced either from U.S. producers or from any of the countries with an alternative arrangement to the tariffs; 2) detailed documentation that the exclusion can only be obtained from a country subject to the tariffs; and 3) that a good faith effort was conducted to check availability from both domestic producers and from all countries not subject to the tariffs. Absent this showing, Commerce should decline to process and post the exclusion request.

BIS response: BIS agrees with this suggested change and has added new certification and evidentiary requirements on exclusion requesters in this proposed rule. Requesters must now before filing an exclusion request, certify that they have first made reasonable efforts to source their product from the United States and then, if unsuccessful in sourcing from the United States, that they have made reasonable efforts to source their product from a country with which the United States has arrived at a satisfactory alternative means to address the threat to the national security under Section 232, and provide evidence of those sourcing attempts simultaneously with the request submission. The process is intended to treat each party as fairly as possible given complex global market conditions and specialized production unique to individual countries.

General Approved Exclusions (GAEs) and General Denied Exclusions (GDEs)

Comment (f)(1): Some commenters raised concerns about whether the adoption of GAEs made the Section 232 exclusions process too much in favor of exclusion requesters and whether similar changes should be extended to objectors in the Section 232 exclusions process.

BIS response: BIS is committed to ensuring that the Section 232 exclusions process is fair and efficient. That is why BIS established the GAEs. BIS is proposing the concept of the GDEs for the same reason. While no specific commenter suggested the adoption of GDEs, *per se*, some commented on related topics regarding creating a concept, such as the GDEs. The creation of the GDE process would ease the bureaucratic burden in the Section 232 exclusions process for all parties and improve the overall efficiency of the Section 232 exclusions process. Additional General Approved (GAEs) and Denied (GDEs) Exclusions would further streamline the existing Section 232 Exclusions Process.

Comment (f)(2): Another commenter suggested that semi-finished steel should be removed from the list of products eligible for an exclusion.

BIS response: BIS will consider this further; it is possible that this product could be a GDE. To reduce public burden and increase efficiency, and thus be considered as a possible GDE, it would need to fit the criteria established by BIS for GDEs. However, BIS is not proposing the establishment of specific GDEs with this proposed rule.

Comment (f)(3): Several commenters suggested specific items that should be used as a GAE.

BIS response: All GAEs are determined based on an internal analysis of data regarding the items and selection criterion to achieve the intended policy objectives.

Comment (f)(4): One commenter suggested that when a GAE is activated or deactivated, there should be notification period before change is implemented to allow exclusion requesters and objectors to adapt to the change.

BIS response: BIS agrees with this suggestion. BIS intends to adopt fifteen-day delayed effective date before implementing such changes to give the public an opportunity to adjust as needed. BIS welcomes further comments on whether more time is required as a notification period before implementing changes to GAEs.

Comment (f)(5): A commenter suggested that BIS allow for objections to GAEs.

BIS response: BIS does not agree with this suggestion. The public is already permitted to provide specific information regarding the inclusion or deletion of GAEs to Section 232-related rules and notices for public comment. This will inform BIS going forward on the changing availability of domestic production. Additionally, BIS will conduct regular analysis of existing GAEs. The purpose of the GAEs is to ensure that the Section 232 exclusions process is as efficient as possible, while also ensuring that BIS does not discourage the domestic production of any item subject to the process.

Comment (f)(6): Several commenters suggested that because there is not a review process, the GAEs essentially cede entire product segments to foreign competitors.

BIS response: BIS disagrees with this suggestion. BIS plans to more routinely issue periodic requests for public comments on proposed changes to GAEs, and when appropriate can remove GAE eligibility in a subsequent regulatory action. GAEs are issued based on sustained lack of successful objections in the Section 232 exclusions process, which indicates that U.S. industry does not produce the products or subproducts in question in a sufficient and reasonably available amount or of a satisfactory quality. GAEs are based on the record of filings in the Section 232 exclusions process, which provides ample opportunity for domestic industry to contest such exclusions prior to their identification as GAEs. Thus, GAEs are meant to cover product segments for which there is insufficient domestic availability.

Comment (f)(7): A commentator noted that there should be more transparency in the process by which BIS determines the products to remove from the GAE list.

BIS response: BIS provides a rationale for the decision to remove or add a GAE in the preamble of the proposed rule announcing any change. In addition, and as described above, the opportunity for public participation and clarification of the criteria for the addition or removal of certain GAEs provides transparency and would be further improved if the changes in this proposed rule are adopted in final form.

Comment (f)(8): One comment suggested that BIS should incorporate the use of ranges for dimensions of material across HTS codes when necessary to simplify the process for BIS. while also providing GAEs for these commonly used imports.

BIS response: The Section 232 Exclusions Process is based on unique products within HTSUS codes. However, BIS is open to exploring the possibility of further incorporating or changing the use of ranges for dimensions of material in a single exclusion request. BIS will seek public comment on this matter. *See* the Request for Public Comments section for specific information sought.

Section 232 Exclusions Portal

Portal and Form Functionality

Comment (g)(1): BIS received several comments regarding the functionality of the Section 232 Exclusions Portal. These included the use of an auto-fill feature for information and the ability for requesters to save drafts.

BIS response: BIS agrees that these are useful suggestions. The cloning feature addresses the auto-fill request. BIS has now implemented a draft saving feature.

Comment (g)(2): Several comments suggested that BIS release more detailed analyses of exclusion requests, particularly in the event of a denial, and any relevant internal analysis or communication related to such requests.

BIS response: BIS assesses the currently available public information regarding decisions as adequate, however, BIS is looking at further ways that additional information can be procured for public consumption. BIS is committed to transparency in the Section 232 exclusion process decisions.

Comment (g)(3): At least one comment requested the introduction of an appeals process to prevent requesters from having to file a new exclusion and repeat the protracted Section 232 exclusion process.

BIS response: BIS disagrees with this suggestion. BIS already provides opportunities for requestors and objectors to expand upon their claims through rebuttals and surrebuttals.

Ultimately, BIS must enforce a point at which new collection of information ends and a final decision is rendered by BIS. Requesters who believe they have new and relevant information can refile without prejudice in the Section 232 Exclusions Portal.

Processing Times

Comment (h)(1): One commentor suggested that BIS should allow domestic industry to file requests based on a 6-digit HTSUS classification number. They noted that BIS previously started allowing domestic industry to file requests for products that cover a range of dimensions within a 10-digit HTSUS statistical reporting number. They assert that this requirement should be loosened to allow requests for a range of products within a 6-digit HTSUS classification number.

BIS response: BIS does not agree with this suggestion. The current Section 232 exclusions process is product based and uses the 10-digit HTSUS statistical reporting number because that level of specificity is needed to administer the granted exclusions and analyze the submissions to the Section 232 exclusions process. It would likely be difficult to implement and monitor exclusions based on the 6-digit HTSUS classification number without undergoing a fundamental change to the Section 232 exclusions process. However, BIS has allowed Requesters to bundle different products, so long as their technical specifications fall within a single 10-digit HTSUS statistical reporting number. The more-general 6-digit HTSUS classification number encompasses so many products that it would be too prohibitive to administer and not targeted enough for use under the Section 232 exclusions process.

Comment (h)(2): Several commentors suggested that if objections including all necessary public information regarding capacity, lead time, and quality and a rebuttal is not filed within the seven-day rebuttal window, BIS should consider the relevant product to be domestically

available and promptly deny the exclusion request. Put more simply, an objection that does not receive a rebuttal should see the original exclusion request be automatically denied.

BIS response: BIS does not agree with this suggestion. BIS is required to analyze all the information in relation to claims made by both the requester and objector.

Comment (h)(3): A commenter suggested that BIS should allow requesters and those submitting a rebuttal to present a full and factual account of their efforts to source domestically, including providing evidence of lack of responsiveness for repeated request for quotes from domestic producers who continue to file objections.

BIS response: BIS agrees with this suggestion and encourages companies to submit such information as part of their exclusion request or subsequent rebuttal filings whenever they deem such information relevant. The additional certification for objectors proposed in this rule also addresses the substance of this comment (described further below).

Comment (h)(4): A commenter suggested that BIS should deny exclusion requests for material that are already available through a tariff-rate quota (TRQ) or country with an existing agreement in place.

BIS response: While BIS does not agree with this suggestion, the addition of new certification language in this proposed rule would require that, before filing an exclusion request, requesters would need to certify that they have first made reasonable efforts to source their product from the United States and then, if unsuccessful in sourcing from the United States, that they have made reasonable efforts to source their product from a country with which the United States has arrived at a satisfactory alternative means to address the threat to the national security under Section 232.

Comment (h)(5): BIS received several additional comments regarding streamlining of the forms or otherwise reducing the administrative burden associated with the Section 232 exclusions process, such as including notifications emails from the Section 232 Exclusions Portal

as Section 232 submissions are working their way through the process. Some of these offered suggestions to alleviate the issue, while others did not.

BIS response: BIS is working to reduce the administrative burden where possible. This feature is already in development. BIS seeks to have notification emails operational in the coming months and is continuing to review other ideas for reducing the administrative burden associated with the Section 232 process.

Comment (h)(6): One commenter suggested updating several fields in the portal.

BIS response: BIS intends to make further changes to the portal, such as automated notification emails for filing status changes, fields to input additional importers of record, and internal process improvements to expedite the administration of decisions. Some of the requested changes would require resources beyond the Department's staffing, time, and budget constraints. BIS is currently working to implement changes in the portal that can be made without costly programming changes and will roll those out as soon as they are available.

Comment (h)(7): A commenter said that BIS should split the Section 232 portal into separate portals for steel and aluminum.

BIS response: BIS does not agree with this suggestion. Companies can already filter between steel and aluminum requests with ease. The BIS website also includes guidance on how to use the portal that helps provide guidance on these types of questions.

Comment (h)(8): One commenter stated that BIS should add an option in the exclusion request form to include multiple residents and non-resident importers of record to reduce the need for, and volume of, importer of record change requests.

BIS response: BIS is currently developing the ability to do this. BIS anticipates this new feature should be available in the next few months.

Regulatory Changes

As detailed above, BIS has outlined the proposed changes as well as the comments responsible for their proposal. In this section, BIS will describe the specific changes to the regulatory text, as proposed in this rule.

Under paragraphs (c) and (d) to supplement no. 1 to part 705, BIS is proposing additional certification text. Under paragraph (c)(5)(ii), certification for volume requested by requesters, BIS is proposing to revise the introductory paragraph. This proposed change would reduce the (c)(5)(ii) introductory paragraph to just two sentences with the substance of the text removed to be added to paragraphs (c)(5)(ii)(A) through (E), as needed. Under paragraph (c)(5)(ii)(A), BIS is proposing additional certification text that requesters have first attempted in good faith in the past calendar year to “source the requested product from the United States and then, if unsuccessful in sourcing from the United States, made reasonable efforts to source the requested product from a country with which the United States has arrived at a satisfactory alternative means to address the threat to the national security under Section 232.” Also, under paragraph (c)(5)(ii)(A), BIS proposes text for requesters to certify that they will provide all documentation justifying the above quoted text simultaneously with the request submission. This requirement will enable BIS to conduct more timely and accurate certification reviews and enhance fairness, transparency, and efficiency in the Section 232 exclusions process for all parties. Similarly, BIS proposes creating a paragraph (d)(5), certification of objections submitted. This new paragraph (d)(5) would add an introductory paragraph to (d)(5), as well as paragraphs (d)(5)(i) and (ii). These two proposed paragraphs, similar to the requester certification process review mechanism, would establish a BIS review mechanism in (d)(5)(ii), like that proposed in (c)(5)(ii)(A).

This rule also proposes modifying paragraph (d)(4) to specify as noted above that delivery times are not considered CBI and must be included in the objection form. The revisions to paragraph (d)(4) also specify that objections that do not include delivery times in the public version will be rejected by BIS.

Much like supplements no. 2 and 3 to part 705 that created GAE tables for steel and aluminum articles, respectively, this rule proposes the creation of new supplements no. 4 and 5 to part 705. Supplement no. 4 would list General Denied Exclusions (GDEs) for steel articles under the Section 232 exclusions process and supplement no. 5 would list GDEs for aluminum articles under the Section 232 exclusions process.

This rule proposes adding a new supplement no. 4 to part 705 — General Denied Exclusions (GDEs) For Steel Articles Under The Section 232 Exclusions Process. This rule also proposes adding a new supplement no. 5 to part 705 — General Denied Exclusions (GDEs) For Aluminum Articles Under The Section 232 Exclusions Process. Both supplements would have the same format. Each of the two supplements would include introductory text to explain the selection process and the role of the GDEs in the Section 232 exclusions process. Any steel or aluminum articles identified as a GDE in one of these two supplements must not be included and would not be considered by BIS in an exclusion request. Like the GAEs, the steel and aluminum GDEs will be identified in a table under the respective supplement. Also, like the two GAE supplements, these two GDE supplements would permit BIS, on behalf of the Secretary of Commerce, to periodically publish notices of inquiry in the *Federal Register* soliciting public comments on potential removals, revisions or additions to this supplement.

BIS encourages the public to participate and request changes to GAEs and GDEs when notices are published seeking comments on GAEs or GDEs. In other times when a member of the Department of Commerce receives comments from a party, either verbally or in writing, regarding requested changes to GAEs or GDEs, it is the practice of the Department of Commerce to document those interactions publicly so there is a public record of such interactions. The public record of such interactions will include a log of the person(s) that petitioned the Department of Commerce, the date on which the interaction occurred, the names and title of all persons that were met with at the Department of Commerce, the mode of communication used (e.g., by email, phone, video conference, or in person), a copy of any written documents

submitted as part of the interaction, and for verbal communications done over the phone, internet, or in person, a summary transcript of the interaction will be included as part of the public record. The public record for such interactions will be made available to the public.

At this time, BIS is proposing the framework for identifying GDEs, but not proposing any specific articles that would qualify for GDE status.

BIS is also proposing technical regulatory changes with this proposed rule. BIS proposes the deletion of examples found in paragraph (c) of supplement no. 1 to part 705. Given how long the Section 232 exclusions process has been effective, these examples are likely no longer necessary or useful to the public. As a conforming proposed change to supplement no. 1, BIS proposes adding a paragraph (h)(v) for regulations regarding the standard and scope of review for supplement no. 1 to part 705. The proposed text for paragraph (h)(v) is mostly made up of text removed from paragraph (c)(6). BIS proposes this change because they apply to all Section 232 submissions, not just exclusions requests, as they did under paragraph (c)(6).

With the proposed addition of supplements nos. 4 and 5, BIS is proposing changes to the introductory text to supplements nos. 2 and 3. These proposed changes are to align the introductory text of supplements nos. 2, 3, 4, and 5 more closely, such that they are more easily understood by the public. BIS is also proposing revisions throughout part 705. These revisions make the regulations easier to understand. These revisions are in paragraphs (c) and (d) in supplement no. 1 to part 705. Specifically, BIS proposes: 1) adding references to aluminum products in paragraph (c)(1) and (d)(1), which had been inadvertently left out; 2) removing “either” from (c)(5)(ii)(D), making it easier to read; 3) adding citations to supplements nos. 2 through 5, a reference to the case-by-case basis of review of exclusions requests and a sentence noting that the burden is on the requester to show that the requests article is “not produced in the United States in a sufficient and reasonably available amount or of a satisfactory quality” to paragraph (c)(6); 4) in paragraphs (c)(6)(i) and (ii), the term “end user” is being changed to “user requesting the exclusion,” a change BIS deems is a needed clarification, not a policy change; 5)

adding more expansive language to account for single and multiple exclusion requests, as well as possible approvals and denials of requests to paragraph (c)(6)(iii); and 6) removing superfluous language and adding additional specific language to paragraph (d)(4), making it easier to understand, and by adding a sentence stating that delivery times are not considered confidential business information and that objections that do not include delivery times in the public version will be rejected. These revisions do not alter 232 exclusions policy.

Request for Public Comment

BIS is seeking public comments on the following issues:

- Changing the Requester Certification Text;
- Requiring Objector Certification;
- Additional evidence requirements for new requester and objector certifications (*i.e.*, what form should this evidence take and how should the evidence be defined as sufficient);
- Change in methodology that requires the consolidation of multiple sizes of a specific product within a specific HTS number and providing relief for sizes with no objection (comments on this issue should be specific to the merits and issues associated with this, as well as how it could be administered);
- Eliminating redundancies in the request and objection forms by removing the charts and tables on product characteristics and chemical composition and require a “full, complete description of the product” be provided by the requestor in the noted section of the questionnaire;
- Clarifying the criteria used for identifying GAEs;
- Whether specific products (*e.g.*, aluminum extrusions; boxed aluminum foil; flat-rolled stainless steel of a width of less than 600 millimeters, not further worked than hot-rolled, of a thickness of less than 4.75 millimeters; and flat wire plated or coated in zinc) should continue to qualify for a GAE;

- Creating a GDE process;
- The process and frequency with which reviews of the GAE and GDE processes will undergo, including comments on how often these reviews should be conducted and the types of information that should be requested when the reviews are being conducted.

See the Dates and Addresses of this proposed rule for guidance on submitting comments.

Rulemaking Requirements

1. Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This proposed rule has been determined to be a “significant regulatory action,” although not economically significant, under section 3(f) of Executive Order 12866. Pursuant to Proclamations 9704 and 9705 of March 8, 2018, and Proclamations 9776 and 9777 of August 29, 2018, the establishment of procedures for an exclusions process under each Proclamation shall be published in the *Federal Register*.
2. The Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.) (PRA) provides that an agency generally cannot conduct or sponsor a collection of information, and no person is required to respond to nor be subject to a penalty for failure to comply with a collection of information, unless that collection has obtained Office of Management and Budget (OMB) approval and displays a currently valid OMB Control Number.

This final regulation involves three collections currently approved by OMB with the following control numbers:

- Exclusions from the Section 232 National Security Adjustments of Imports of Steel and Aluminum (control number 0694-0139).
- Objections from the Section 232 National Security Adjustments of Imports of Steel and Aluminum (control number 0694-0138).
- Procedures for Submitting Rebuttals and Surrebuttals Requests for Exclusions from and Objections to the Section 232 Adjustments for Steel and Aluminum (OMB control number 0694-0141).

This proposed rule is expected to reduce the overall burden hours and cost associated with the following collections: OMB control numbers 0694-0139, 0694-0138, and 0694-0141. This reduction is expected because of the revised General Approved Exclusions (GAEs) criteria and the addition of General Denied Exclusions GDEs for steel and aluminum, which are expected to result in a decrease of 5,946 exclusion requests under 0694-0139, 2,806 objection requests under 0694-0138, and 1,946 rebuttals, and surrebuttals under 0694-0141 per year for a total burden hour savings of 36,954 and 1,367,298 dollars to the public.

BIS is making a change to the collection for OMB control number 0694-0139 to account for a revised certification under paragraph (c)(5)(ii) introductory text and one new certification that needs to be made in the Section 232 Exclusions Portal under paragraph (c)(5)(ii). These certification changes are expected to be an increase of 4,460 burden hours and an increase of \$165,020 dollars to the public. Lastly, BIS is making a change to the collection for OMB control number 0694-0138 to account for two new certifications that need to be made in the Section 232 Exclusions Portal for certifications for objections under paragraph (d)(5)(i) and (ii). These certification changes are expected to be an increase of 2,806 burden hours and an increase of \$155,733 to the public. This increase in the burden under OMB control numbers 0694-0139 and 0694-0138 considers the decreases described above in the total overall numbers.

3. This proposed rule does not contain policies with federalism implications as that term is

defined in Executive Order 13132.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public comment, and a delay in effective date are inapplicable because this regulation involves a military or foreign affairs function of the United States. (*See* 5 U.S.C. 553(a)(1)). As explained in the reports submitted by the Secretary to the President, steel and aluminum are being imported into the United States in such quantities or under such circumstances as to threaten to impair the national security of the United States, and therefore the President is implementing these remedial actions (as described Proclamations 9704 and 9705 of March 8, 2018) to protect U.S. national security interests. That implementation includes the creation of an effective process by which affected domestic parties can obtain exclusion requests “based upon specific national security considerations.” BIS started this process with the publication of the March 19 rule and refined the process with the publication of the September 11 and June 10 rules and is continuing this process with the publication of this proposed rule. The revisions to the exclusion request process are informed by the comments received in response to the March 19 rule and BIS’s experience with managing the Section 232 exclusions process. Commenters on the past rules (March 19, September 11, and June 10 rules) were generally supportive and welcomed the idea of creating an exclusion process, but most of the commenters believe the exclusion process, although improving over time, still could be significantly improved for it to achieve the intended purpose. The commenters identified several areas where transparency, effectiveness, and fairness of the process could be improved. BIS understands the importance of having a transparent, fair, and efficient product exclusion request process, consistent with the directive provided by the President to create this type of process to mitigate any unintended consequences of imposing the tariffs on steel and aluminum to protect critical U.S. national security interests. The publication of this rulemaking should make further improvements in all three respects, but because of the scope of this new process, BIS is publishing this rule as a proposed rule with a request for comments.

Consistent with the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) (5 U.S.C. 601 *et seq.*), BIS has prepared the following initial regulatory flexibility analysis (IRFA) of the impact that this proposed rule, if adopted, would have on small businesses.

Description of the Reasons Why Action Is Being Considered

The policy reasons for issuing this proposed rule are discussed in the background section of the preamble of this document and, consequently, are not repeated here.

Statement of the Objectives of, and Legal Basis for, the Proposed Rule; Identification of All Relevant Federal Rules Which May Duplicate, Overlap or Conflict with the Proposed Rule

The objective of this proposed rule, and all other Section 232-related rules published by BIS, are discussed in the background section of the preamble of this document and, consequently, are not repeated here. The legal basis for this proposed rule is as follows: Section 232 of the Trade Expansion Act of 1962, as amended (19 U.S.C. 1862) and Reorg. Plan No. 3 of 1979 (44 FR 69273, December 3, 1979).

No other Federal rules duplicate, overlap, or conflict with this proposed rule.

Number and Description of Small Entities Regulated by the Proposed Action

This proposed rule would apply to all persons engaged in the Section 232 exclusions process. BIS does not collect or maintain the data necessary to determine exactly how many of the affected persons are small entities as that term is used by the Small Business Administration. However, BIS does ask requestors of the Section 232 exclusions process to self-identify if they are a small business as defined by the Small Business Administration. From this data, BIS has estimated the total number of requestors and objectors who are likely to be small businesses that would be impacted by changes identified in this proposed rule.

Roughly 380 requestors self-identified as small businesses, filing roughly 27,000 exclusion requests in the Section 232 exclusions portal since March 2022, when we began including the option for requestors to self-identify as a small business. BIS does not have the

same self-identification option for objectors. However, over the same period, roughly 100 objectors filed objections in the Section 232 exclusions portal; many of these are easily identifiable as being large corporations, not small businesses. Therefore, somewhere between 380 and 500 small businesses could be impacted by these proposed changes. Specific burden estimates for OMB under control numbers 0694-0139 (Exclusions from the Section 232 National Security Adjustments of Imports of Steel and Aluminum), 0694-0138 (Objections from the Section 232 National Security Adjustments of Imports of Steel and Aluminum), and 0694-0141 (Procedures for Submitting Rebuttals and Surrebuttals Requests for Exclusions from and Objections to the Section 232 Adjustments for Steel and Aluminum) are detailed in paragraph 2 of the Rulemaking Requirements section above.

Based on the analysis provided above, the amendments proposed in this rule would not impose a significant economic impact on a substantial number of small businesses.

Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Proposed Rule

The changes proposed in this rule and the corresponding reporting, recordkeeping, and other compliance requirements are discussed in the background section of the preamble of this document and, consequently, are not repeated here. To the extent that compliance with the changes proposed in this rule would impose a burden on persons, including small businesses, BIS believes the burden would be minimal.

Significant Alternatives and Underlying Analysis

As noted above, BIS does not believe that the amendments proposed in this rule, if published in a final rule, would have a significant economic impact on small businesses. Nevertheless, consistent with 5 U.S.C. 603(c), BIS considered significant alternatives to these proposed amendments to assess whether the alternatives would: (1) accomplish the stated objectives of this proposed rule (consistent with the objectives of the Section 232 exclusions process); and (2) minimize any significant economic impact of this proposed rule on small

entities. BIS has determined that proposals detailed above are the least disruptive alternative for implementing changes to the Section 232 exclusions process.

Lastly, consistent with 5 U.S.C. 603(c), BIS assessed the use of performance standards rather than design standards and considered whether an exemption for small businesses was practical under the circumstances (i.e., within the context of the changes proposed in this rule).

This proposed rule does not contain an exemption for small businesses from the proposed Section 232 exclusions process changes because these controls are essential to U.S. national security and BIS' regulations apply to all parties. An exemption for small businesses would undermine the effectiveness of these proposed changes.

Conclusion

BIS has identified proposed changes to the Section 232 exclusions process. Consequently, consistent with the Regulatory Flexibility Act, BIS has prepared this IRFA addressing the impact that this proposed rule, if adopted, would have on small entities. BIS's assessment indicates that the amendments proposed in this rule would not have a significant economic impact on a substantial number of small entities.

Please submit any comments concerning this IRFA in accordance with the instructions provided in the "ADDRESSES" section of this proposed rule.

List of Subjects in 15 CFR Part 705

Administrative practice and procedure, Business and industry, Classified information, Confidential business information, Imports, Investigations, National security.

For the reasons set forth in the preamble, part 705 of subchapter A of 15 CFR chapter VII is amended as follows:

PART 705—EFFECT OF IMPORTED ARTICLES ON THE NATIONAL SECURITY

1. The authority citation for part 705 continues to read as follows:

Authority: Section 232 of the Trade Expansion Act of 1962, as amended (19 U.S.C. 1862) and Reorg. Plan No. 3 of 1979 (44 FR 69273, December 3, 1979).

2. Section 705.1 is revised to read as follows:

§ 705.1 Definitions.

Applicant means the person or entity submitting a request or application for an investigation pursuant to this part.

Department means the United States Department of Commerce and includes the Secretary of Commerce and the Secretary's designees.

Secretary means the Secretary of Commerce or the Secretary's designees.

3. Supplement no. 1 to part 705 is amended by:

- a. Revising paragraphs (c) and (d);
- b. Revising paragraph (h) introductory text; and
- c. Adding paragraph (h)(2)(v).

The revisions and addition read as follows:

**Supplement No. 1 to Part 705—Requirements for Submissions Requesting Exclusions
From the Adjustment of Imports of Aluminum and Steel Imposed Pursuant to Section 232
of the Trade Expansion Act of 1962, as amended**

* * * * *

(c) *Exclusion requests*—(1) *Who may submit an exclusion request?* Only directly affected individuals or organizations located in the United States may submit an exclusion request. An individual or organization is “directly affected” if they are using aluminum or steel in business activities (*e.g.*, construction, manufacturing, or supplying aluminum or steel product to users) in the United States.

(2) *Identification of exclusion requests.* Separate exclusion requests must be submitted for steel products with chemistry by percentage breakdown by weight, metallurgical properties, surface quality (*e.g.*, galvanized, coated), and critical dimensions covered by a common HTSUS statistical reporting number. Separate exclusion requests must be submitted for aluminum products with critical dimensions covered by a common HTSUS statistical reporting number.

The exclusion request forms allow for minimum and maximum dimensions. A permissible range must be within the minimum and maximum range that is specified in the HTSUS statistical reporting number and applicable notes. Separate exclusion requests must also be submitted for products falling in more than one ten-digit HTSUS statistical reporting number. BIS will approve exclusions on a product basis, and the approvals will be limited to the individual or organization that submitted the specific exclusion request, unless BIS approves a broader application of the product-based exclusion request to apply to additional importers. Other directly affected individuals or organizations located in the United States that wish to submit an exclusion request for a steel or aluminum product that has already been the subject of an approved exclusion request may submit an exclusion request under this supplement. These additional exclusion requests by other directly affected individuals or organizations in the United States are not required to reference the previously approved exclusion but are advised to do so if they want BIS to take that exclusion into account when reviewing a subsequent exclusion request. Directly affected individuals and organizations in the United States will not be precluded from submitting a request for exclusion of a product even though an exclusion request submitted for that product by another requester or that requester was denied or is no longer valid.

(3) *Where to submit exclusion requests?* All exclusion requests must be submitted directly on the Section 232 Exclusions Portal (<https://www.commerce.gov/page/section-232-investigations>).

(4) *No time limit for submitting exclusion requests.* Exclusion requests may be submitted at any time.

(5)(i) *Substance of exclusion requests.* An exclusion request must specify the business activities in the United States within which the requester is engaged that qualify the individual or organization to be directly affected and thus eligible to submit an exclusion request. The request should clearly identify, and provide support for, the basis upon which the exclusion is sought. An exclusion will only be granted if an article is not produced in the United States in a sufficient and

reasonably available amount, or of a satisfactory quality, or based upon specific national security considerations.

(ii) *Certification for volume requested.* Effective for all Exclusion Requests, the undersigned certifies in the Section 232 Exclusions Portal that the information herein supplied in response to this questionnaire is complete and correct to the best of his/her knowledge. By signing the certification below, I attest that:

(A) My organization intends to manufacture, process, or otherwise transform the imported product for which I have filed an exclusion request, or I have a purchase order or orders for such products;

(B) I have personal knowledge or a well-informed basis to state that my organization has in good faith, within the past 12 months from submission of this request, first made reasonable efforts to source the requested product from the United States and then, if unsuccessful in sourcing from the United States, made reasonable efforts to source the requested product from a country with which the United States has arrived at a satisfactory alternative means to address the threat to the national security under Section 232. Simultaneously with this submission, my organization is providing evidence of these sourcing attempts.

(C) My organization does not intend to use the exclusion for which I have filed an exclusion request, if granted, solely to hedge or arbitrage the price;

(D) My organization expects to consume, sell, or otherwise use the total volume of product across all my active exclusions and pending exclusion requests during my organization's business activities within the next calendar year;

(E) If my organization is submitting an exclusion request for a product for which we previously received an exclusion, I certify that my organization imported the full amount of our approved exclusion(s) last year or intended to import the full amount but could not due to one of the following reasons:

(1) Loss of contract(s);

(2) Unanticipated business downturns; or

(3) Other factors that were beyond my organization's control that directly resulted in less need for steel or aluminum articles; and

(F) I certify that the exclusion amount requested this year is the amount that my organization expects to import based on our current business outlook. If requested by the Department of Commerce, my organization shall provide documentation that justifies its assertions in this certification regarding its past and projected imports of steel or aluminum articles related to the past and current calendar year exclusion requests.

Note to paragraphs (c)(5)(i) and (ii): Any exclusion request that does not include a certification made in accordance with paragraph (c)(5)(ii) or fully respond to a request for verification will be treated as an incomplete submission and will therefore be rejected.

(6) *Criteria used to review exclusion requests.* Except as provided for under supplements nos. 2 through 5 to this part, the U.S. Department of Commerce will review each exclusion request on a case-by-case basis to determine whether an article described in an exclusion request meets any of the following three criteria: the article is not produced in the United States in an amount that can be delivered in a time period equal to or less than the time needed for the requester to obtain the product from their foreign supplier, is not produced in the United States in a satisfactory quality, or for specific national security considerations. The burden is on the requester to show that the article is not produced in the United States in a sufficient and reasonably available amount or of a satisfactory quality. To provide additional context on the meaning and application of the criteria, paragraphs (c)(6)(i) through (iii) of this supplement define key terms used in the review criteria. The U.S. Department of Commerce will use the same criteria identified in paragraphs (c)(6)(i) through (iii) of this supplement when determining whether it is warranted to approve broader product-based exclusions based on trends the

Department may see over time with Section 232 submissions. Items for which a broader determination has been made will be identified in supplements no. 2 or 3 to part 705.

(i) *Not produced in the United States in a sufficient and reasonably available amount.*

The exclusion review criterion “Not produced in the United States in a sufficient and reasonably available amount” means that the amount that is needed by the user requesting the exclusion is not available immediately in the United States to meet its specified business activities. Available “immediately” means that a product (whether it is currently being produced in the United States, or could be produced in the United States) can be produced and delivered by a U.S. producer “within eight weeks” from the receipt of a binding purchase order, or, if that is not possible, by a date earlier than the time required for the requester to obtain the entire quantity of the product from the requester’s foreign supplier. Furthermore, to the extent that an objector can produce and deliver a portion, which is less than 100 percent, but ten percent or more, of the amount of steel or aluminum needed in the business activities of the user requesting the exclusion in the United States described in the exclusion request, the Department of Commerce may deny a requested exclusion for that percentage of imported steel or aluminum. It is incumbent upon both the exclusion requester, and objecting producers, to provide evidence supporting their claimed delivery times.

(ii) *Not produced in the United States in a satisfactory quality.* The exclusion review criterion “not produced in the United States in a satisfactory quality” does not mean the steel or aluminum needs to be identical, but it does need to be equivalent as a substitute product.

“Substitute product” for purposes of this review criterion means that the steel or aluminum being produced by an objector can meet “immediately” (*see* paragraph (c)(6)(i) of this supplement) the quality, regulatory, or testing standards for the U.S.-produced steel to be used in the business activity in the United States of the user requesting the exclusion.

(iii) *For specific national security considerations.* The exclusion review criterion “or for specific national security considerations” is intended to allow the U.S. Department of

Commerce, in consultation with other parts of the U.S. Government as warranted, to make determinations whether a particular exclusion request or class of exclusion requests should be approved or denied based on specific national security considerations.

(d) Objections to submitted exclusion requests—(1) Who may submit an objection to a submitted exclusion request? Any individual or organization that manufactures steel or aluminum articles in the United States may file objections to steel or aluminum exclusion requests, but the U.S. Department of Commerce will only consider information directly related to the submitted exclusion request that is the subject of the objection.

(2) Identification of objections to submitted exclusion requests. When submitting an objection to a submitted exclusion request, the objector must locate the exclusion request and submit the objection in response to the request directly in the Section 232 Exclusions Portal. Once the relevant exclusion request has been located, an individual or organization that would like to submit an objection will access the objection form by scrolling to the bottom of the exclusion request form and then fill out the web-based form for submitting their objection to the exclusion request in the Section 232 Exclusions Portal (<https://www.commerce.gov/page/section-232-investigations>).

(3) Time limit for submitting objections to submitted exclusions requests. All objections to submitted exclusion requests must be submitted directly on the Section 232 Exclusions Portal (<https://www.commerce.gov/page/section-232-investigations>) no later than 30 days after the related exclusion request is posted, with the 30-day clock starting at 11:59 p.m. Eastern Time on the calendar day an exclusion request is posted.

(4) Substance of objections to submitted exclusion requests. The objection should clearly identify, and provide support for, its opposition to the proposed exclusion, with reference to the specific basis identified in, and the support provided for, the submitted exclusion request. The objector must be able to specifically identify from where and in what timeframe it can produce and deliver the requested product or a suitable substitute in the quantity requested and whether it

can produce and deliver such product “immediately” with reference to the time required for the requester to obtain the product from its foreign suppliers. The objector must specifically identify from where and in what timeframe it will be able to produce and deliver to the requester the quantity of steel or aluminum requested. It is incumbent on both the exclusion requester, and the objecting producers, to accurately set forth the time needed for themselves or their supplier to produce and deliver the product or a suitable substitute product, from the receipt of a binding purchase order to ultimate delivery of the material to the domestic facility of the requester, and to provide supplemental evidence supporting these claimed timeframes. If the objector does not currently produce the requested steel or aluminum product, but anticipates starting or restarting production of the product or its substitute in the future, the objector must provide as part of the objection a summary timeline that specifies the steps that will occur over the time needed to produce that steel or aluminum product. This information will assist not only the Department of Commerce in its review of the objection, but also the requester of the exclusion in determining whether to file a rebuttal to the objection. The above-specified timeframes are not considered CBI and must be reported where requested in the public objection form. Objections that do not include these timeframes in the public version will be rejected by BIS.

(5) *Certification of objection submitted.* Effective for all Objections, the undersigned certifies in the Section 232 Exclusions Portal that the information herein supplied in response to this questionnaire is complete and correct to the best of his/her knowledge. By signing the certification below, I attest that:

(i) My organization currently manufactures the requested product at a facility in the United States and, in response to a written request by the requester occurring within the year, will offer to sell and make ‘immediately available’ to the requester the full quantity of the product at then-existing market rates and terms and in accordance with the other terms in this Objection.

(ii) Simultaneously with this objection, my organization is submitting evidence that it has commercially sold the same product as that which is being requested within the last 12 months, or evidence that it has engaged in sales discussions with this requesting company or company requesting the same product within the last 12 months.

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(h) Disposition of Section 232 submissions -

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(v) *Standard and scope of review.* The review of individual exclusion requests for products not covered by the categorical authorizations under supplements nos. 2 or 3, by exclusions denials under supplements nos. 4 and 5, or decided for national security considerations, will be made on a case-by-case basis to determine whether, consistent with these regulations, the requester has shown that the subject article should be excluded from the tariffs imposed by Section 232.

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4. Supplement No. 4 to part 705 is added to read as follows:

Supplement No. 4 to Part 705—General Denied Exclusions (GDEs) for Steel Articles under the Section 232 Exclusions Process

This supplement identifies certain steel articles for import for which no request for exclusion from the Section 232 tariffs will be granted or considered by Commerce because requests to exclude these articles are covered by a General Denied Exclusion (GDE). The Secretary of Commerce, in consultation with the Secretary of Defense, the Secretary of the Treasury, the Secretary of State, the United States Trade Representative, the Assistant to the

President for Economic Policy, the Assistant to the President for National Security Affairs, and other senior Executive Branch officials as appropriate, makes these determinations that certain steel articles may be excluded from the Section 232 exclusions process under a GDE consistent with the objectives of the Section 232 Exclusions Process as outlined in supplement no. 1 to this part. The GDEs described in this supplement apply to any exclusion requester. GDEs do not include quantity limits. Each GDE identifier will be effective fifteen calendar days after publication of a *Federal Register* notice either adding or revising a specific GDE identifier. For exclusion requests already in the portal at the time a *Federal Register* notice is published identifying a new GDE and up until the effective date of the new GDE, the Section 232 Exclusions Portal will still allow for the submission of objections for these steel articles. The Commerce review of such exclusion requests will be informed by the fact that these steel articles will soon be identified as GDEs. Once a GDE becomes effective, the Section 232 Exclusion Portal will prohibit persons from being able to submit exclusion requests for these identified GDEs. These GDEs are indefinite in length, but the Department of Commerce on behalf of the Secretary of Commerce may at any time issue a *Federal Register* notice removing, revising or adding to an existing GDE in this supplement as warranted to align with the objectives of the Section 232 exclusions process as described in supplement no. 1 to this part. GDEs are limited to steel articles that have consistently not been approved for exclusions under the Section 232 exclusions. The Department of Commerce on behalf of the Secretary of Commerce may periodically publish notices of inquiry in the *Federal Register* soliciting public comments on potential removals, revisions or additions to this supplement.

GDE IDENTIFIER	DESCRIPTION OF STEEL THAT MAY NOT BE REQUESTED IN AN EXCLUSION REQUEST (at 10-digit Harmonized Tariff Schedule of the United States (HTSUS) statistical reporting number or more narrowly defined at product level)	OTHER LIMITATIONS	FEDERAL REGISTER CITATION

4. Supplement No. 5 to part 705 is added to read as follows:

Supplement No. 5 to Part 705—General Denied Exclusions (GDEs) for Aluminum Articles under the Section 232 Exclusions Process

This supplement identifies aluminum articles that may not be included in the Section 232 exclusion requests because these articles have been denied from import under a General Denied Exclusion (GDE). The Secretary of Commerce, in consultation with the Secretary of Defense, the Secretary of the Treasury, the Secretary of State, the United States Trade Representative, the Assistant to the President for Economic Policy, the Assistant to the President for National Security Affairs, and other senior Executive Branch officials as appropriate, makes these determinations that certain aluminum articles are excluded from the Section 232 exclusions process by being identified under a GDE consistent with the objectives of the Section 232 exclusions process as outlined in supplement no. 1 to this part. GDEs are limited to aluminum articles that have consistently not been approved for exclusions under the Section 232 exclusions. Because these aluminum articles have consistently not been approved, it has been determined by the relevant agencies to be warranted to exclude these identified articles from the Section 232 exclusions process. Inclusion of these articles as GDEs will ease the burden on objectors from having to review exclusions requesters where it has already been demonstrated consistently that such articles should not be approved in exclusion requests. The GDEs described in this supplement apply to any exclusion requester. GDEs do not include quantity limits. Each GDE identifier will be effective fifteen calendar days after publication of a *Federal Register* notice either adding or revising a specific GDE identifier. For exclusion requests already in process at the time a *Federal Register* notice is published identifying a new GDE and up until the effective date of the new GDE, the Section 232 Exclusions Portal will still allow for the submission of exclusion requests for these aluminum articles. The Commerce review of such exclusion requests will be informed by the fact that these aluminum articles will soon be identified as GDEs. Once a GDE becomes effective, the Section 232 Exclusion Portal will

prohibit persons from being able to submit exclusion requests for these identified GDEs. These GDEs are indefinite in length, but the Department of Commerce on behalf of the Secretary of Commerce may at any time issue a *Federal Register* notice removing, revising or adding to an existing GDE in this supplement as warranted to align with the objectives of the Section 232 exclusions process as described in supplement no. 1 to this part. The Department of Commerce on behalf of the Secretary of Commerce may periodically publish notices of inquiry in the *Federal Register* soliciting public comments on potential removals, revisions or additions to this supplement.

GDE IDENTIFIER	DESCRIPTION OF ALUMINUM THAT MAY NOT BE REQUESTED IN AN EXCLUSION REQUEST (at 10-digit Harmonized Tariff Schedule of the United States (HTSUS) statistical reporting number or more narrowly defined at product level)	OTHER LIMITATIONS	FEDERAL REGISTER CITATION

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